IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2007

CORAM:

THE HONOURABLE MR.JUSTICE K.RAVIRAJA PANDIAN

AND

THE HONOURABLE MRS.JUSTICE CHITRA VENKATARAMAN

Tax Case (Appeal) Nos.374 and 375 of 2004

Commissioner of Income-tax
Coimbatore. ... Appellant

Vs.

M/s.Supriya Investments Pvt.Ltd.,
Coimbatore – 641 018. ... Respondent.

Tax Case Appeal Nos.374 and 375 of 2004 are filed under Section 260-A of the Income-tax Act, 1961 against the orders of the Income-tax Appellate Tribunal, 'C' Bench, Chennai made in I.T.A.Nos.939 and 940(Mds)/1998 for the assessment years 1994-95 and 1995-96.

T.C (A) Nos.374 and 375/2004 against the order of the Commissioner of Income Tax, Coimbatore dated 26.3.1998 ITA No.1416(9) 97-98 (CBE) against the order of the Assistant Commissioner of Income Tax Company Circle-1 Coimbatore dated 3.3.2000 PAN/GIR NO.CY-2326 Assessment year 1995-96 and 1994-95.

For Appellant : Mr.Muralikumaran,
Sr.Standing Counsel for
Income-tax.

For Respondent : Mr.Philip George

JUDGMENT

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(Judgment of the Court was made by CHITRA VENKATARAMAN,J.)

These tax case appeals are filed in respect of the assessment years 1994-95 and 1995-96 at the instance of the revenue challenging the correctness of the order of the Income-tax Appellate Tribunal made in I.T.A.Nos.939 and 940/Mds/98 on the questions of law stated below:

"1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in setting aside the order of the Commissioner of Income

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Tax under Section 263 on the grounds that the Commissioner of Income Tax could not consider the tax effect of two assessment years together?

2. Whether on the facts and in the circumstances of the case that the Income Tax Appellate Tribunal was right in holding that the income/loss arising from the transactions in shares of the assessee was income/loss under the head "capital gains" in spite of the fact that the assessee was showing the income/loss as business income/loss all along?

2. In the return filed for the assessment year 1994-95 and 1995-96, the assessee claimed loss on the sale of shares as business loss. The assessing authority rejected the claim of the assessee and treated the same as capital loss. It may be seen here that as regards the prior year, the assessment was completed treating the loss on the sale of shares as business loss.

2. The Commissioner of Income-tax in exercise of the powers under Section 263 of the Income-tax Act revised the order of assessment taking the view that the shares sold by the assessee must be held as "capital investment". Consequently, the profit arising on the sale of the shares must be taken as "capital assets" inviting the provisions of "capital gains". The Commissioner of Income-tax pointed out that the assessee has been indulging in frequent purchase and sale of shares and consequently she took a view that the transactions have to be assessed as "business loss" as against "capital loss" granted by the assessing authority. The Commissioner further pointed out that the assessee is an investment company dealing in shares. Consequently, going by the nature of the business carried on by the assessee, the Commissioner of Income-tax set aside the assessment order with a direction to assess the "income/loss" from the transaction in shares as "business loss/income" for the assessment years 1994-95 and 1995-96.

3. Aggrieved by the said order of revision passed by the Commissioner of Income Tax, the assessee preferred appeals before the Income Tax Appellate Tribunal contending that what had been held by them was only a capital asset. The assessee company was carrying on business as an investment company and the same had been disclosed as so in the balance sheet. Most of the shares had been held for a long time and therefore placing reliance on the decision of the Calcutta High Court in the case of KARAMCHAND THAPAR AND BROTHERS VS. COMMISSIONER OF INCOME-TAX reported in (1978) 115 ITR 255, the assessee contended that the sale of shares were to be assessed only under the head "capital gains". Considering the loss suffered, the same had to be treated as capital loss.

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4. The Tribunal considered the claim of the assessee and the revenue and pointed out that on the undisputed facts right from inception, the assessee had never shown the value of the shares held by it as "stock in trade" or "current assets" in its balance sheet and they had shown the same only as "investment". It also pointed out that for the assessment year upto 1994-95, the assessee claimed profit or loss on the sale of shares as "business income/loss" and only in the assessment year 1995-96, it had admitted the profit on sale of shares as "capital gains" in the return. However, for the assessment year 1994-95, the assessing authority rejected the claim of the assessee as "business income" and treated the income as "capital gains/loss" and for the next assessment year 1995-96, the assessee had followed the same principle, realising the correctness of the view expressed by the assessing authority in terms with the memorandum of the company. The Tribunal, by placing reliance on a decision of the Supreme Court in the case of RAJA BAHADUR KAMAKHYA NARAIN SINGH VS. C.I.T. (1970) 77 ITR 253 (SC), held that the decision to treat the income arising on the sale of shares as "business income" must primarily rest on the aspect that the assessee should have intention to carry on business in shares as the trading activity. Applying the law declared by the Supreme Court, the Tribunal pointed out that the assessee never showed the value of the share held by it either under "current assets" or under "stock-in-trade" in its balance sheet and it had been consistently shown by the assessee as "investment" in the balance sheet. The intention of the assessee is clear that the assessee was holding the shares only as investments and it was not holding the shares as a "stock-in-trade" or "current assets" to deal in them. Ultimately the Tribunal came to the conclusion that what was realised by the assessee on the sales of the shares was only "capital asset" resulting in "capital gain". In these circumstances, the Tribunal allowed the appeals of the assessee.

5. Aggrieved by this the revenue has come on appeal before this Court contending that the conduct of the assessee right from the beginning shows that he intended to keep the shares only as a "stock in trade" as such, being current assets, the Tribunal committed error in its view that it is a "capital asset" attracting liability as "capital gains".

6. We do not find any force in the argument made by the learned counsel for the revenue.

7. The reading of the order passed by the Tribunal shows that it was an undisputed fact that right from the inception the assessee had never shown the value of the shares held by it either under "current assets" or under "stock in trade". However, the counsel for the revenue without getting over this finding of fact insisted that the Tribunal misdirected itself in holding that the sale of the shares should be treated as "capital asset". A reading of the Tribunal order and applying the law laid down by the

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Supreme Court in 77 ITR 253 referred supra shows that factually the assessee had been dealing with the shares as an "investment". Being an investment company it is not uncommon for a person like that of an assessee to have a back up of an investment as capital in its business. No material has been placed before this Court to question the correctness of the Tribunal's finding of fact on the admitted facts that the assessee was holding that investments as a capital asset and that in the absence of any finding as to the intention of the assessee to carry on business in shares as a trading activity, we do not find any justification in the contention of the revenue. Considering the material placed before this Court, we do not find any justification to disturb the finding arrived at by the Tribunal and in these circumstances, the appeals are dismissed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Asst.Registrar,
Income-tax Appellate Tribunal Bench C
Rajaji Bhavan, III Floor, Besant Nagar,
Chennai.90

2. The Commissioner of
Income-tax
Coimbatore.

3. The Asst.Commissioner
of Income Tax
Company Circle-I, Coimbatore

1 cc to Mr.N. Muralikumaran, Advocate,Sr. 55226

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2004

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